

U.S. Department of Labor

Board of Contract Appeals
1111 20th Street, N.W.
Washington, D.C. 20036



DATED: March 31, 1989

Case No.: 1985-BCA-2

Appeal of:

OICs OF AMERICA, INC.

UNDER CONTRACT NO. JC-05-0-00066

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For the Appellant

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For the Respondent

DECISION OF THE BOARD

This is a timely appeal from a final decision of a Contracting Officer of the United States Department of Labor, respondent herein, issued on June 18, 1984. AF 8-13.¹ In that decision, the Contracting Officer disallowed and demanded reimbursement of \$6,349 under Contract No. JC-05-0-00066. The appeal was heard in Washington, D.C. on April 19, 1988.

Appellant presented one witness at the hearing, Ashley H. Cook, who was the National Director of the office of Job Corps Programs for the appellant contractor during the period of performance of the subject contract. Tr. 10.

The appellant filed a Post-Hearing Brief.

¹The reference "AF" is to the Appeal File of the case and "Tr" is to the transcript of the hearing.

FINDINGS OF FACT

1. Appellant,, OICs of America,, Inc.-Little Rock Job Corps Center (hereinafter "OICs"), is a non-profit corporation established in 1980 under the Comprehensive Employment and Training Act, as amended, 29 U.S.C. 801 et seq. Its principal purpose was to support the activities of the Department of Labor's Job Corps by providing a comprehensive training program to prepare youth 16 through 21 years, primarily from Arkansas, of all ethnic groups, for meaningful employment and the responsibilities of citizenship. AF 99; Tr. 10-12.

2. Contract No. JC-05-0-00066 (hereinafter "the Contract") was effective August 15, 1980 through October 31, 1982. AF 8. It was a cost-reimbursement contract to operate the Little Rock Job Corps Center. The total amount of funds authorized was \$3,715,462. AF 24.

3. In administering the contract, appellant paid \$2,204 in excess of the \$152 per day limitation, on a consultant contract for staff training. AF 49-51.

4. In administering the contract, appellant paid \$2,267 in travel reimbursement in excess of the amounts stated in the contract, which provided for regular per diem not to exceed \$35 per day and \$50 per day in high rate geographical areas. AF 52-55.

5. In his final decision, the Contracting Officer disallowed the following expenditures under the Contract:

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|---|---------|
| a. (Auditors' finding 1-2B) (Need for Improvement in Contracting Procedures) For excess payment on the consultant contract, on the ground that it exceeded the Department of Labor's limitation of \$152 per day. | \$2,204 |
| b. (Auditors' finding 2) (Need to Adhere to Travel Reimbursement Policy Specifics in Job Corps Contract) For reimbursement of travel costs, on the ground that it exceeded the allowable amounts stated in the contract, which provided for regular per diem not to exceed \$35 per day and \$50 per day in high rate geographical areas. | \$2,267 |
| c. (Auditors' finding 2) (Need to Adhere to Travel Reimbursement Policy Specifics | \$1,878 |

in Job Corps Contract) For reimbursement of expenses, on the ground that no records existed supporting these payments.

Total Amount in Dispute.....\$6,349

Discussion

(1) Staff Training Consultant Contract

Mr. Cooke testified for appellant that the consultant contract providing for a fee of \$190 per day was approved by the Department of Labor by letter dated August 5, 1981. Tr. 20. He explained further that Clause 8, as amended by Modification 9, of the contract states that \$152 per day is the maximum to be paid for consultant fees, and that this clause applies to "cost reimbursement supply contracts for other than educational institutions." Tr. 20.

The subject consultant fees were paid to Opportunities Academy of Management Training, Inc. (hereinafter "AMT"). Appellant argues that as AMT is an educational institution, it is not subject to the limitation in Clause 8, as amended by Modification 9. Tr. 21.

The auditors found that "although the original contract agreement was signed prior to the contract amendment, the contractor is bound by the contractual requirements set forth in the amendment because those requirements supercede those set forth in the original agreement." AF 11.

We find that the contractor is bound by the Modification 9 amendment to Clause 8. However, the amendment applies to "contracts for other than educational institutions." AF 180. The purpose of AMT as described in its By Laws is " 1) industrial manufacturing and retail skills, 2) in the management of manpower training programs, 3) in entrepreneurial management education, 4) in the management of entrepreneurial management education, 5) in the management of industrial and institutional concerns, etc., all designed to ease unemployment and underemployment situations wherever they may exist." Appellant's Exhibit A ("Exh. A").

Thus, AMT is an educational institution, and as such, Modification 9 of the Contract does not apply to the consultant contract between AMT and the appellant contractor. We find that the Contracting Officer incorrectly disallowed appellant's payment of \$2,204 on the consultant contract for staff training.

(2) Travel Costs

The auditors found that "[t]he Contractor's travel policy allowed for reimbursement of travel expenses in excess of rates specified in the contract to include the actual cost of a hotel room plus \$16 per diem for food costs. There was no pre-determined maximum per day amount. The Contractor did not revise their travel policies to conform with contractual provisions. This resulted in costs reported in excess of the allowable amounts stated in the contract which provided for regular per diem not to exceed \$35 per day and \$50 per day in high rate geographical areas." AF 52.

Mr. Cooke testified for appellant that the Department of Labor identified the cities to which OIC personnel traveled and the hotels in which they stayed. Tr. 24-27. He also testified that the appellant computed the cost to the staff personnel above the contract limitations (\$35 and \$50) and "when this was brought to the attention of the United States Department of Labor, the personnel there then advised us to use the formula that we had originally proposed which was actual hotel cost plus \$16 a day for per diem..." Tr. 27. We find that there is evidence that the Department of Labor gave travel authorization for at least three personnel. Exh. A. However, this authorization did not specify the hotel in which the OIC personnel would stay. Despite Mr. Cooke's testimony that Department of Labor personnel advised appellant to use the proposed formula for travel costs, there is no documentation for this change of the limitations an travel per diem found in Clause 12 of the contract. AF 120. Accordingly, disallowance of \$2,267 in travel costs is affirmed.

(3) Staff Expenses

The Auditors questioned \$1,878 in staff expenses because the Contractor claimed travel expenses for which supporting documentation could not be located. In his final decision, the Contracting Officer disallowed the \$1,878 in travel expenses pursuant to 20 C.F.R. 684.130(c): "Each center operator and each subcontractor shall maintain a financial management system that will provide accurate, current, and complete disclosure of the financial results of Job Corps operations, and will provide sufficient data for effective evaluation of program activities ..." AF 12.

Mr. Cooke testified that OIC explained, in its initial response to the auditors' report, that "the information he forwarded to us was inaccurate in that he challenged the question of several line item by voucher number, payee and amounts and check numbers in some cases. A review, if in fact the voucher was

only for \$208 and that's all the expense we had. We asked the auditor if he would revisit our files to give us an accurate picture of that which he was requesting information and he said just submit information based on what he had submitted to us. Again, we contend that his requests certainly do not match the records on file and in fact there are examples being shown here of the vouchers that he questioned and the check numbers that he questioned." Tr. 30-31.

The auditors identified 8 travel vouchers for which they requested supporting documentation. Exh. A. The appellant has submitted copies of the 8 vouchers. Exh. A. Although the amount of each voucher submitted by appellant does not correspond with the auditors' exhibit, we find that appellant has provided the documentation necessary to support these costs. Thus, we find that the Contracting Officer incorrectly disallowed appellant's payment of \$1,878 in staff expenses.

ORDER

For the reasons stated above, this appeal is allowed to the extent of \$4,082 for payment on the staff training consultant contract (\$2,204) and staff expenses (\$1,878).

In all other respects, the Contracting Officer's disallowances are affirmed, and the appeal is dismissed.

Samuel B. Groner
Administrative Law Judge
Member, U.S. Department of Labor
Board of Contract Appeals

I concur.

Nahum Litt
Chief Administrative Law Judge
Chairman, U.S. Department of Labor
Board of Contract Appeals

I concur.

Glenn Robert Lawrence
Administrative Law Judge
Member, U.S. Department of Labor
Board of Contract Appeals